

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1008 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SHIVABHAI ATMARAM PATEL

Versus

JAYANTIBHAI HARIBHAI PATEL

Appearance:

MR GR SHAIKH for Petitioner
MR SL CHAUDHARI for Respondent No. 1
NOTICE SERVED for Respondent No. 4
Mr. L.R. Pujari, AGP for Respondent No. 6

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 26/09/2000

ORAL JUDGEMENT

Learned advocate Mr. Shaikh is appearing for the petitioner. Learned AGP Mr. Pujari has appeared for the

respondent authorities. No one has appeared for the respondents no. 1 to 5.

In this petition, rule has been issued by this court on 21.2.1989 and ad interim relief qua possession has been granted by this court which has continued till this date. The facts of this petition are as under in short:

The petitioner by a registered sale deed purchased agricultural lands bearing block no. 950 s.n.600/2 admeasuring A.0 G.12 and block no. 873 paiki s.n. 568 A.0 G.25 from the respondents no. 1 to 5. That the document of sale was executed on 27.7.1981. That the entry to that effect was made in the record being entry No. 584 and 584/1 on 1.12.1982 in favour of the petitioner which were, in turn, certified on 5.2.1983. Again, an entry no. 5782 was also posted in the record of rights and the Mamlatdar vide its endorsement dated 20.7.82 cancelled the said entry relating to block no. 950 and block no. 873 paiki and a note to that effect was made that transfer results in a fragment and accordingly, said entry was cancelled. It is the case of the petitioner that the Prant Officer, Viramgam Prant, vide its case No. CON-2494 held an enquiry and issued a show cause notice to the petitioner to show cause as to why sale in favour of the petitioner should not be cancelled as the said sale is in breach of sec.9 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and subsequent thereto, the Prant Officer, vide his order dated 27.2.1987 held that the sale in favour of the petitioner has resulted in breach of sec.9 of the said Act which order dated 27.2.1987 was challenged by the petitioner by filing revision application no. aSRD/CON/AMD/22 of 1987 under sec. 35 of the Act before the Addl. Chief Secretary, (Appeals) Revenue Department who, vide his order dated 17.3.1988 confirmed the said order passed by the Prant Officer. Feeling aggrieved by the said order of the Addl. Chief Secretary (Appeals) dated 17.3.1988, the petitioner moved the Addl. Chief Secretary in person by making grievance to the effect that there are no blocks and that even otherwise enquiry was held under section 9 the Addl. Chief Secretary (Appeals) Revenue Department was requested to take the order for reconsideration by review which also came to be rejected by the Addl. Chief Secretary vide his order dated 28.3.1988. Feeling aggrieved by the said orders passed by the Addl. Chief Secretary confirming the orders passed by the lower authorities, the petitioner has approached this court by way of this petition under

Article 227 of the Constitution of India.

I have heard the learned advocates for the parties. Learned advocate Mr. Shaikh appearing for the petitioner herein has submitted that the order has been passed by the Prant Officer Viramgam Prant (Annex."A") dated 6th February, 1987 for violation of section 9 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and notice was also served to the petitioner for breach of sec.9 of the said Act. He has submitted that the authorities have not at all believed the defence of the petitioner. He has submitted that the defence of the petitioner was that the land which was purchased by the petitioner from the adjoining land is belonging to the petitioner and, therefore, there was no question of fragment and in support of that, copy of village form no. 7/12 has been produced on record. In spite of that fact, the Prant Officer has not considered such defence of the petitioner and has come to a different conclusion which was contrary to the evidence on record. The revisional authority has also not appreciated such contention and has erred in confirming the orders passed by the lower authorities. He has submitted that the land in question has been consolidated with block no. 901 and both the lands are adjoining to each other and, therefore, there is no breach of sec.9. He has submitted that before the revisional authority, it was also submitted that both the lands have been consolidated in the name of the petitioner and, therefore, there was no breach of section 9 of the said Act. However, according to Mr. Shaikh, initially the proceedings were initiated against the petitioner for violation of sec.9 of the said Act but the revisional authority has considered breach of section 31 of the Act for which no show cause notice was issued to the petitioner and no proceedings were initiated in that regard against the petitioner prior thereto and, therefore, the order passed by the revisional authority is contrary to the initial proceedings which were initiated for breach of sec. 9 of the said Act and therefore, according to Mr. Shaikh, the revisional authority has also committed grave error in coming to the conclusion that there was breach of sec. 31 of the Act. He has submitted that the revisional authority has erred in rejecting review application. The petitioner has produced copies of village form no. 7/12 for block no. 950, s.n.600/2 and block no. 933 s.n.589/2 and village form no. 6 on record. Learned advocate Mr. Shaikh has also submitted that there is unreasonable delay on the part of the authorities in initiating the proceedings

under the Act because the sale deed is executed on 27th July, 1981 and the proceedings were initiated in the year 1987 i.e. after the period of about six years and, therefore also, the orders passed by the authorities are required to be quashed and set aside on that ground alone.

As against that, learned AGP Mr. Pujari has submitted that the Prant Officer has rightly passed the orders in accordance with law and the revisional authority was right in confirming the said orders passed by the Prant Officer. He has further submitted that there is no error apparent on the face of record and, therefore, this court should not interfere with the same in exercise of the powers under Article 227 of the Constitution of India. He has further submitted that this Court is having very limited jurisdiction under Article 227 of the Constitution and therefore, also, this Court should not interfere with the orders impugned herein.

I have considered the submissions made from both the sides. I have also considered the orders passed by the Prant Officer, Viramgam as well as the orders passed by the revisional authority in revision and review. Apparently, the Prant Officer has passed the order dated 6th February, 1987 for the alleged breach of section 9 of the Act. However, the Prant Officer has not considered the submissions made by the petitioner before him. It was the specific case of the petitioner before the Prant Officer that the land in question was purchased by the petitioner in the year 1981 and the adjoining land bearing block no. 901 is belonging to the petitioner and for that, copy of village form no. 7/12 was produced on record before the Prant Officer and yet, this submission of the petitioner was not considered and the relevant documents produced by the petitioner in that regard were also not considered by the Prant Officer. Similarly, the Revisional Authority namely Addl. Chief Secretary (Appeals) Revenue Department has also committed gross error which is apparent on the face of the record because before the revisional authority, order of the Prant Officer dated 6th February, 1987 was under challenge but the revisional authority has come to the conclusion that it amounts to breach of sec. 31 of the Act and has ignored the evidence on record which was as produced by the petitioner and therefore, looking to the conclusion and the observations made by the revisional authority, it is clear that the order passed by the revisional authority is beyond the scope of the original proceedings which were for the breach of sec.9 of the Act.

Admittedly, as regards alleged breach of sec. 31, the petitioner has not been given any show cause notice. Not only that but the Viramgam Prant Officer has also not come to the conclusion that there was breach of sec.31 and, therefore, the order of the Revisional Authority is beyond the scope and ambit of the original orders passed by the Prant Officer and as such, the orders passed by the Prant Officer as well as by the Addl. Chief Secretary (Appeals) in revision are contrary to the evidence on record and are, therefore, required to be quashed and set aside while remanding the matter back to the original authority namely Prant Officer, Viramgam Prant to decide the matter afresh for the alleged breach of section 9 of the Act by giving reasonable opportunity to the petitioner and to pass appropriate orders in accordance with law after appreciating the evidence on record. This petition is, therefore, required to be allowed. Hence following order is passed.

This petition is allowed. The order passed by the Prant Officer, Viramgam dated 27th February, 1987 and the order passed by the Additional Chief Secretary (Appeals) Revenue Department, dated 17th March, 1988 and 28th March, 1988 are hereby quashed and set aside and the matter is remanded back to the Prant Officer, Viramgam to decide afresh the said proceedings against the petitioner in accordance with law after giving reasonable opportunity to the petitioner to produce the evidence and to pass appropriate orders in accordance with law after appreciating the evidence on record. Rule is made absolute to the extent indicated hereinabove with no order as to costs.

26.9.2000 (H.K. Rathod,J.)

Vyas